

Steven R. Cavalli (SBN
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	: Chapter 11 Case No.
	:
Motors Liquidation Company, et	: Case No.: 09-50026 (REG)
	:
al., f/k/a General Motors	: Maria Mercado's (Claim # 11864)
	: Response to Debtors' Eighty-
Corp., et al. ,	: Fifth Omnibus Objection to
	: Claims (Claims with
Debtor.	: Insufficient Documentation)

I. Introduction

Maria Mercado filed a proof of claim against Debtor on October 19, 2009 with an attachment indicating the nature of her personal injury action, her injuries and her allegations.

Debtors contend Ms. Mercado did not respond to their letter requesting documentation. (See Debtors' Eighty-Fifth Omnibus Objection p. 6 ¶ 2.) However, Ms. Mercado did respond to Debtors' letter with a CD-ROM of her medical records indicating the nature and extent of her injuries. Nevertheless, Debtors claim they do not have enough information to ascertain the validity of Ms. Mercado's claims.

Therefore, Claimant submits this Response to Debtors' Eighty-Fifth Omnibus Objection to Claims.

1 **II. Facts**

2 **A. Ms. Mercado Filed a Timely Proof of Claim**

3 As is stated above, Ms. Mercado filed a timely proof of
4 claim on October 19, 2009. (See Exhibit A). In the attachment
5 to her proof of claim, Ms. Mercado stated she was involved in an
6 accident in which she was a passenger in a 2004 Chevy Tahoe,
7 manufactured by General Motors Corporation. The accident
8 rendered Ms. Mercado a quadriplegic. Ms. Mercado explained that
9 it was her contention the vehicle was defectively designed in
10 that it did not have as standard equipment Electronic Stability
11 Control, and had the vehicle been so equipped it would not have
12 rolled over and she would not be injured as seriously as she is.
13 (Exhibit A, attachment).

14
15 **B. Ms. Mercado Supplemented Her Proof of Claim with her
Medical Records to Indicate the Extent of Her Damages.**

16 Ms. Mercado received a letter from Debtors in June, 2010
17 requesting additional documentation to her claim, but without
18 specifying what information they were seeking (See Exhibit B).
19 Claimant's attorney, the undersigned, requested an extension of
20 time to respond to the letter, which was granted. (See Exhibit
21 C).

22 Thereafter, on July 12, 2010, Ms. Mercado sent Debtors a
23 CD-ROM of her medical records, and indicated that should Debtors
24 require further information, they should contact Ms. Mercado's
25

1 counsel. (See Exhibit D). Debtors never contacted this office
2 with requests for any further documentation.

3 When claimant's counsel received Debtors' Omnibus Objection
4 regarding claims with insufficient documentation, the
5 undersigned again contacted the claims department to determine
6 what other documents were needed. (See Exhibit C). The Claims
7 department instructed claimant's counsel to respond in court.

8 **C. No Further Documentation is Available at This Time.**

9 Litigation in Ms. Mercado's personal injury action has just
10 begun. Discovery has yet to commence, and therefore no
11 additional information is available regarding Ms. Mercado's
12 claim at this time. Claimant will supplement the documentation
13 supporting her claim as it becomes available.

14 **III. Argument**

15
16 **A. Ms. Mercado's Proof of Claim is Prima Facie Evidence
of the Validity of Her Claim.**

17 A proof of claim executed and filed in accordance with the
18 Bankruptcy Rules shall constitute prima facie evidence of the
19 validity and amount of the claim. Fed. R. Bankr.P. 3001(f). The
20 only requirement is that it be "a written statement setting
21 forth a creditor's claim," and that it "conform substantially to
22 the appropriate Official Form." Fed. R. Bankr.P. 3001(a).

23 In *In re Farmland Industries, Inc.* 305 B.R. 490,
24 493 (Bkrtcy.W.D.Mo.,2003), the court found that a claim that set
25

1 forth the amount of the claim and conformed to the Official Form
2 was not invalid for insufficient documentation.

3 Likewise, Ms. Mercado's claim is a written statement
4 setting forth the basis for the claim, the amount of her claim
5 and it conforms to the appropriate Official Form. Additionally,
6 Ms. Mercado sent her medical records outlining the extent of her
7 injuries. Therefore, this is prima facie evidence of the
8 validity of her claim and it should not be disallowed for
9 insufficient documentation.

10
11 **B. There Are No Specific Requirements for Documentation
for Unsecured Claims.**

12 "There are no specific requirements for documentation for
13 unsecured claims, other than submitting a writing, if the debt
14 is based on a writing." *In re Thompson*, 260 B.R. 484, 486
15 (Bankr.W.D.Mo.2001) (citing *Ashford v. Consolidated Pioneer*
16 *Mortgage (In re Consolidated Pioneer Mortgage)*, 178 B.R. 222,
17 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir.1996)
18 (unpub.)).

19 Ms. Mercado has conformed to the basic requirements and,
20 therefore, her claim should not be disallowed.

21
22 **C. This Court's Order Approving Procedures for Filing of
23 Proofs of Claims Allow a Claimant to Proceed on a
Claim By Explaining Why Supporting Documentation is
Not Available.**

24 In this Court's order approving the procedures for the
25 filing of the proofs of claims (Docket No. 4079) the court

1 specifically allowed individuals to "include supporting
2 documentation or an explanation as to why such documentation is
3 not available. (See Page 2 ¶ (c)) (emphasis added).

4 Here, Claimant has submitted all the documentation that is
5 available to her at this time. As is discussed above,
6 litigation on Plaintiff's claims has just begun and discovery
7 has not yet commenced. Thus, no other documentation other than
8 what has already been submitted is available at this time.
9 Claimant can and will supplement her proof of claim with
10 documentation as it becomes available.

11 **IV. Conclusion**

12 For the foregoing reasons, it is respectfully submitted
13 that the Court should allow Ms. Mercado's claim to proceed.

14
15 Dated: 10/11/10

By: 

Steven R. Cavalli
Gwilliam, Ivary,
Chiosso, Cavalli & Brewer

EXHIBIT A

RECEIVED OCT 27 2009



7001317



UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK		PROOF OF CLAIM
<p>Name of Debtor (Check Only One): <input checked="" type="checkbox"/> Motors Liquidation Company (f/k/a General Motors Corporation) <input type="checkbox"/> MLCS, LLC (f/k/a Saturn, LLC) <input type="checkbox"/> MLCS Distribution Corporation (f/k/a Saturn Distribution Corporation) <input type="checkbox"/> MLC of Harlem, Inc. (f/k/a Chevrolet-Saturn of Harlem, Inc.)</p> <p>Case No. 09-50026 (REG) 09-50027 (REG) 09-50028 (REG) 09-13558 (REG)</p> <p>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case, but may be used for purposes of asserting a claim under 11 U.S.C. § 503(b)(9) (see Item # 5). All other requests for payment of an administrative expense should be filed pursuant to 11 U.S.C. § 503.</p>		<p>Your Claim Is Scheduled As Follows:</p> <p>THE GARDEN CITY GROUP, INC. OCT 19 2009</p>
<p>Name of Creditor (the person or other entity to whom the debtor owes money or property): MARIA MERCADO</p> <p>Name and address where notices should be sent: MARIA MERCADO 449 ROADRUNNER DR. PATTERSON CA 95363</p> <p>Telephone number: 209 408 7612 Email Address: mercado_408@yahoo.com</p>		<p><input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.</p> <p>Court Claim Number: _____ (If known)</p> <p>Filed on: _____</p>
<p>Name and address where payment should be sent (if different from above):</p> <p>Telephone number: _____</p>		<p><input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.</p> <p><input type="checkbox"/> Check this box if you are the debtor or trustee in this case.</p>
<p>1. Amount of Claim as of Date Case Filed, June 1, 2009: \$ 20,000,000.00</p> <p>If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. If all or part of your claim is asserted pursuant to 11 U.S.C. § 503(b)(9), complete item 5.</p> <p><input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.</p>		<p>5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.</p> <p>Specify the priority of the claim.</p> <p><input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).</p> <p><input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).</p> <p><input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).</p> <p><input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).</p> <p><input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).</p> <p><input type="checkbox"/> Value of goods received by the Debtor within 20 days before the date of commencement of the case - 11 U.S.C. § 503(b)(9) (§ 507(a)(2)).</p> <p><input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____).</p> <p>Amount entitled to priority: \$</p> <p>*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</p>
<p>2. Basis for Claim: PERSONAL INJURY (See instruction #2 on reverse side.)</p> <p>3. Last four digits of any number by which creditor identifies debtor: _____</p> <p>3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)</p> <p>4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.</p> <p>Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Equipment <input type="checkbox"/> Other Describe: _____</p> <p>Value of Property: \$ _____ Annual Interest Rate: _____ %</p> <p>Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____</p> <p>Basis for perfection: _____</p> <p>Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____</p>		
<p>6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.</p> <p>7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)</p> <p>DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.</p> <p>If the documents are not available, please explain in an attachment.</p>		
<p>Date: 10/15/09</p> <p>Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. P.O. Box 2079</p> <p>Spavelli, atty for Maria Mercado Oakland, CA 94604</p>		<p>FOR COURT USE ONLY</p>

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.
Modified B10 (GCC) (12/08)

510 832 5411



3129178221

Attachment to Proof of Claim

7. On July 11, 2008, the claimant, MARIA MERCADO, was a passenger in a 2004 Chevy Tahoe, manufactured by General Motors Corporation. The driver of the vehicle lost control of the vehicle, the vehicle rolled over, and MARIA MERCADO was rendered a quadriplegic as a result. The vehicle was defectively designed in that it did not have as standard equipment Electronic Stability Control. Had the vehicle been so equipped, the vehicle would not have rolled over and MARIA MERCADO would have not been injured as seriously as she is.

EXHIBIT B

6-7-10
VIA FIRST CLASS MAIL

MARIA MERCADO
449 ROADRUNNER DR
PATTERSON, CA 95363

**Re: In re Motors Liquidation Company, et al. (f/k/a/ In re General Motors Corporation,
et al.) Case No.: 09-50026 (REG)**

Dear Claimant,

Motors Liquidation Company (f/k/a General Motors Corporation) and its affiliated debtors ("MLC") are in receipt of the following claim that you filed against MLC:

11864 MARIA MERCADO

The purpose of this letter is to request that you provide MLC with documentation in support of this claim, such as invoices, contracts, financial records, a complaint, and/or other information to substantiate the amount and basis of your claims. If you do not provide us with documentation for your claim, MLC may choose to object to your claim as lacking sufficient documentation to establish the validity of your claim. If you wish to provide MLC with documentation for your claim, please complete the enclosed Claim Documentation Letter and return it to MLC at the address indicated in the top left hand corner of the letter no later than **6/14/2010**. Alternatively, if you wish to withdraw your claim at this time, please complete the enclosed Withdrawal of Claim form and file with the court according to the instructions listed on the form.

Please be aware that submission of documentation for your claims will not result in allowance of your claims. MLC reserves all rights with regard to the above-listed claims, including the right to object to your claims.

Should you have any questions about this matter, please contact MLC at 1-800-414-9607 or by e-mail at claims@motorsliquidation.com.

Sincerely,

Motors Liquidation Company

Enclosure

EXHIBIT C

REDACTED

-----Original Message-----

From: claims@motorsliquidation.com [mailto:claims@motorsliquidation.com]
Sent: Monday, October 04, 2010 3:58 PM
To: Steven Cavalli
Subject: RE: Maria Mercado Claim #11864

Dear Mr. Cavalli,

Motors Liquidation Company filed a no support objection to this claim on the 85th omnibus objection. The claim should be expunged on 10/26 unless we receive a formal, timely response from the claimant. Please see the objection for all additional instructions on filing a response, if one is sought.

Feel free to contact us with further questions via email or at 1-800-414-9607.

Respectfully,

Motors Liquidation Company

Quoting Steven Cavalli <SCavalli@giccb.com>:

> I note that you are now moving the Bankruptcy court to dismiss this
> claim for failure to provide sufficient documentation to apprise you
> of the nature of the claim. The claim appraises you that the basis for
> liability is the failure to provide ESC as standard equipment on the
> 2004 Ford Tahoe in which Ms. Mercado was riding as a passenger. In
> addition, we have provided you with all of the medical records we have
> to date. What further information could you possibly need to be
> sufficiently apprised as to the basis for her claim? Please let me
> know and I will be happy to provide it if there is such information

> available.
>
> Steven R. Cavalli
> Gwilliam, Ivary, Chiosso, Cavalli & Brewer
> 510-832-5411
> 5410-832-1918 (fax)
> scavalli@giccb.com
>
> -----Original Message-----
> From: claims@motorsliquidation.com
> [mailto:claims@motorsliquidation.com]
>
> Sent: Friday, June 11, 2010 7:57 AM
> To: Steven Cavalli
> Subject: Re: Maria Mercado Claim #11864
>
> Dear Mr. Cavalli,
>
> In response to your e-mail, we will extend the response deadline by
> the 30 days as you requested. Thus the new deadline for this claimant
> will be July 14, 2010.
>
> Motors Liquidation Company Claims Processing
>
> Quoting Steven Cavalli <SCavalli@giccb.com>:
>
>> Please be advised that our office represents Maria Mercado. Today
>> she provided me with a letter that was apparently sent directly to
>> her requesting documentation of her claim which is to be provided by
>> June 14, 2010. I am interested in providing the documentation we
>> have, but will need more time to put it together. Please extend that
>> time for
> 30
>> days.
>>
>> Regards,
>>
>> Steven R. Cavalli, Esq.
>> Gwilliam, Ivary, Chiosso,
>> Cavalli & Brewer
>> 1999 Harrison St., Ste. 1600
>> Oakland, CA 94612
>> 510-832-5411
>> 510-832-1918 (fax)
>> scavalli@giccb.com
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EXHIBIT D

GWILLIAM, IVARY, CHIOSSO, CAVALLI & BREWER

J. Gary Gwilliam

Steven R. Cavalli

Steven J. Brewer

Randall E. Strauss

ATTORNEYS AT LAW

A Professional Corporation

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Oakland, California 94612-3528

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Post Office Box 2079
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www.giccb.com

James R. Chiosso
1942-2001

Of Counsel
Eric H. Ivary

Phone 510.832.5411
Fax 510.832.1918
Contra Costa County
Phone 925.820.0335

July 12, 2010

Motors Liquidation Company
Attn.: Claims Team
2101 Cedar Springs Road, Suite 1100
Dallas, TX 75201
claims@motorsliquidation.com

Re: *In re Motors Liquidation Company, et al. ("Debtors")*
Case No. 09-50026 (REG) – Capping Claim Letter
Our Client: Maria Mercado
Proof of Claim No.: 7001317
Date of Accident: July 18, 2008

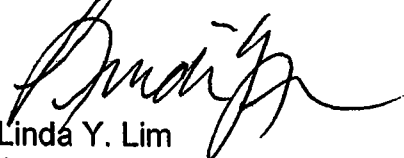
To Whom It May Concern:

Please find a disc enclosed providing you with the medical records of Doctors Medical Center regarding the care and treatment of our client, Maria Mercado.

Should you have any questions or require further information do not hesitate to contact Steve Cavalli.

Very truly yours,

**GWILLIAM, IVARY, CHIOSSO,
CAVALLI & BREWER**



Linda Y. Lim
Senior Litigation Paralegal

LYL/fhs
Enclosure
111929